

AMENDED IN SENATE JANUARY 4, 2006

AMENDED IN SENATE APRIL 26, 2005

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 421

Introduced by Senator Simitian

February 17, 2005

An act to add ~~Section 25354.6 to~~ *Article 7.3 (commencing with Section 25383) to Chapter 6.8 of Division 20 of the Health and Safety Code*, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 421, as amended, Simitian. Hazardous substances: ~~methamphetamine~~ *illegal drug labs: funding.*

Existing law requires the Department of Toxic Substances Control to take removal actions with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, or a material intended to be used in the unlawful manufacture of controlled substances, and the department is authorized to expend funds appropriated from the Illegal Drug Lab Cleanup Account in the General Fund for this purpose. Existing law requires the account to be funded by moneys appropriated directly from the General Fund.

This bill would *enact the Illegal Drug Lab Cleanup Act, define terms, and* establish a procedure to determine the annual cost for taking removal and remedial actions to clean up drug lab waste, as defined, by requiring the development of an annual work plan and cost estimate. The bill would require the department, by September 1, 2006, and every September 1 annually thereafter, to set the amount of

a fee upon the first sale of pseudoephedrine *by a manufacturer or importer* in this state at an amount sufficient to fund the annual work plan, but not more than a specified amount.

~~The bill would require the State Board of Equalization to collect a fee, commencing January 1, 2007, upon the first sale of pseudoephedrine by a manufacturer in this state, in the amount determined by the department. The bill would require the fee revenues to be deposited in the Illegal Drug Lab Cleanup Subaccount, which the bill would create in the Toxic Substances Control Account in the General Fund. The bill would authorize the department to expend the funds in the subaccount, revenues in the subaccount to be expended, upon appropriation by the Legislature, to pay the administrative costs of the State Board of Equalization (board) in collecting the fee, to pay refunds, and to provide funding to the department to take removal and remedial actions to clean up drug lab waste. The bill would authorize the department to expend those funds by entering into a contract with a city or county to take or oversee removal or remedial actions to clean up drug lab waste. The bill would also authorize the State Board of Equalization to expend the fee revenues in the Illegal Drug Lab Cleanup Subaccount, upon appropriation by the Legislature, for the costs of administering and collecting the fee.~~

The bill would require a person who manufactures pseudoephedrine in this state or who imports pseudoephedrine into this state to submit an annual registration to the Department of Justice, unless the person imports less than an unspecified amount. The bill would prohibit a person from selling or distributing a product containing pseudoephedrine if the product is received or purchased from a manufacturer or importer who is not registered as required by the act. The bill would require a registrant to file a quarterly report with the Department of Justice containing specified information, and would require the Department of Justice to charge a fee to cover the costs incurred in maintaining the list of registrants. The bill would authorize the Department of Justice to take specified actions with regard to ascertaining the information contained in the quarterly reports.

The bill would require the Department of Justice to send a report to the board, in a specified manner, containing information, as specified, regarding persons who owe the fee. The board would be required to mail each person listed in the report a notice of determination containing the amount of the fee due, in accordance with the

information contained in the Department of Justice's report. The bill would specify procedures for the collection of the fee, including specifying a procedure when the Department of Justice determines that a person who is required to register has failed to register or to file a correct quarterly report.

The bill would authorize the board to impose specified penalties for a failure to file a correct and timely quarterly report. The bill would also impose a civil penalty of not more than \$10,000 upon a person who fails to properly register with the Department of Justice or upon a person who is a retailer or distributor and who receives or purchases products containing pseudoephedrine from an unregistered manufacturer or importer. The bill would require the civil penalties to be deposited into the Environmental Enforcement and Training Account, which is available for expenditure by the Environment Protection Agency for environmental enforcement purposes.

The bill would provide that when the department and the Department of Justice provide the Department of Finance with a joint letter that contains a specific finding the act would become inoperative on the date the Secretary of State receives that letter from the Department of Finance.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Methamphetamine is a powerful and addictive stimulant
- 4 that affects the central nervous system.
- 5 (b) The drug is made in clandestine laboratories with relatively
- 6 inexpensive over-the-counter ingredients.
- 7 (c) The primary ingredient in methamphetamine production is
- 8 pseudoephedrine, which is found in many over-the-counter cold
- 9 medicines. It has become the new precursor for making
- 10 methamphetamine. Criminals have easy access to
- 11 pseudoephedrine, which has led to a rapid increase in clandestine
- 12 "kitchen" methamphetamine labs.
- 13 (d) If a typical box of pseudoephedrine decongestants contains
- 14 24 tablets, a methamphetamine manufacturer would need 29
- 15 boxes of tablets to make an ounce of methamphetamine.

1 (e) The chemicals specified in subdivision (c) are harmful if
2 ingested, inhaled or absorbed through the skin. In Arizona, police
3 frequently charge methamphetamine makers with felony child
4 abuse if any minors are in the home where manufacturing is
5 taking place.

6 (f) The chemicals specified in subdivision (c) can contaminate
7 structural materials, furnishings, wastewater systems, and soils.

8 (g) Chemicals found in methamphetamine labs can cause
9 cancer, short-term and permanent brain damage, developmental
10 and growth problems in children and teens, reproductive system
11 toxicity, internal and external chemical burns, immune system
12 problems, heart problems, and respiratory system problems.
13 Young children breathe and develop faster than adults and
14 therefore can be much more susceptible to the chemicals used to
15 manufacture methamphetamine.

16 (h) Methamphetamine labs can be set up in almost any
17 location, including a motel, house, apartment, storage unit,
18 vehicle, kitchen, or barn, using instructions that are easily
19 available on the Internet. If methamphetamine is cooked within a
20 building, the chemicals from the cooking process are conducted
21 and spread throughout the entire building.

22 (i) The Department of Toxic Substances Control has
23 completed emergency cleanups of over 15,000 methamphetamine
24 labs in the past 10 years. Under existing law, the gross removal
25 of an illegal drug lab is the emergency cleanup of a hazardous
26 substance that poses an immediate threat to public health or
27 safety. The Department of Toxic Substances Control is
28 responsible for this portion of the cleanup, which is paid for
29 using General Fund moneys.

30 (j) The deep-cleaning or remedial action of a
31 methamphetamine lab is the responsibility of local health and
32 human services departments, environmental health divisions,
33 hazardous materials divisions, or fire departments. The local
34 agency issues a notice to the property owner to clean up the
35 property, but the standard for cleanup of those labs varies from
36 local agency to local agency and from property owner to property
37 owner.

38 (k) Existing law places the ultimate responsibility for the
39 remedial cleanup of a former methamphetamine lab in the hands
40 of the property owner.

(l) The Legislature declares that the imposition of a fee upon the sale of pseudoephedrine by this act would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution, because the amount and nature of the fee has a fair and reasonable relationship to the adverse environmental burdens imposed by the disposal of pseudoephedrine at methamphetamine labs and there is a sufficient nexus between the fee imposed and the use of those fees to support the cleanup of drug lab waste at methamphetamine lab sites.

SEC. 2. Article 7.3 (commencing with Section 25383) is added to Chapter 6.8 of Division 20 of the Health and Safety Code, to read:

Article 7.3. Illegal Drug Lab Waste Cleanup Act

25383. (a) For purposes of this article, the following definitions shall apply:

- (1) "Board" means the State Board of Equalization.
 - (2) "Importer" means a person who imports pseudoephedrine into this state, for sale or distribution in this state.
 - (3) "Drug lab waste" means the contamination resulting from the use of pseudoephedrine in the unlawful manufacture of a controlled substance.
 - (4) "Fee" means the fee imposed pursuant to Section 25383.1.
 - (5) "Manufacturer" means a person who manufactures pseudoephedrine sold in this state.
 - (6) "Quarterly report" means the report that a registrant is required to file with the Department of Justice pursuant to Section 25383.4.
 - (7) "Registrant" means a manufacturer or importer of pseudoephedrine who is required to annually provide certain information to the Department of Justice pursuant to Section 25383.3.
 - (8) "Subaccount" means the Illegal Drug Lab Subaccount created pursuant to subdivision (c) of Section 25383.1.
- (b) This article shall be known, and may be cited, as "The Illegal Drug Lab Cleanup Act."
- 25383.1. (a) On or before September 1, 2006, and on or before September 1 annually thereafter, the department shall set

1 the amount of a fee upon the first sale of pseudoephedrine in this
2 state by a manufacturer or importer, who is required to register
3 pursuant to Section 25383.3, at an amount sufficient to fund the
4 annual work plan developed pursuant to Section 25383.2, but in
5 an amount of not more than .0232 cent (\$.000232) per
6 milligram of pseudoephedrine.

7 (b) On and after September 1, 2006, the board shall collect the
8 fee imposed pursuant to this section from each registrant.

9 (c) The fee revenues collected pursuant to this section shall be
10 deposited in the Illegal Drug Lab Cleanup Subaccount, which is
11 hereby created in the Toxic Substances Control Account in the
12 General Fund, for expenditure, upon appropriation by the
13 Legislature, solely for the following purposes:

14 (1) To pay for the administrative costs of the board for
15 collecting and making refunds associated with the collection of
16 the fee imposed pursuant to this section.

17 (2) To pay for refunds of the fee.

18 (3) (A) To provide funding to the department to take removal
19 and remedial actions to clean up drug lab waste.

20 (B) The department may expend the funds authorized for
21 expenditure pursuant to this paragraph by entering into a
22 contract with a city or county to take or oversee removal or
23 remedial actions to clean up drug lab waste.

24 25383.2. The following procedure shall be used to determine
25 the annual cost for the department to take removal or remedial
26 actions to clean up drug lab waste pursuant to this article:

27 (a) On or before March 1, 2006, and on or before March 1
28 annually thereafter, the department shall submit to the
29 Department of Finance an annual work plan for taking removal
30 or remedial action to clean up drug lab waste, including the
31 estimated costs to complete that work plan. In determining the
32 annual cost of implementing the work plan, no more than 3
33 percent of the annual cost shall include the department's costs
34 for overhead and administration.

35 (b) On or before April 1, 2006, and on or before April 1
36 annually thereafter, the Department of Finance shall certify that
37 the proposed work plan is feasible and that the estimated cost for
38 implementing the work plan is within 25 percent of the estimate
39 determined by the Department of Finance to implement the
40 annual work plan.

1 (c) If the Department of Finance does not certify the
2 department's proposed work plan and the cost estimate pursuant
3 to subdivision (b), the Department of Finance and the
4 department shall meet and confer and produce a final work plan
5 and cost estimate on or before the subsequent May 1 after the
6 date that the decision not to certify the work plan and cost
7 estimate was made.

8 (d) If, after conducting a meeting pursuant to subdivision (c),
9 the Director of Finance and the director do not agree on the
10 work plan and cost estimate, the Governor shall submit a work
11 plan and cost estimate to the department on or before that
12 subsequent May 15.

13 25383.3. (a) A person who manufactures pseudoephedrine in
14 this state, or who imports pseudoephedrine into this state shall
15 register with the Department of Justice.

16 (b) This section does not apply to a person who imports less
17 than _____ of pseudoephedrine into this state during a
18 calendar year and who does not manufacture any
19 pseudoephedrine in this state.

20 (c) A person shall not sell or distribute any product containing
21 pseudoephedrine in the state if the product is received or
22 purchased from a manufacturer or importer who is not registered
23 in accordance with the requirements of this article.

24 25383.4. (a) A person required to register with the
25 Department of Justice pursuant to Section 25383.3, shall file a
26 quarterly report with the Department of Justice. The quarterly
27 report shall be due on the last day of the month following each
28 quarterly period and shall provide all of the following
29 information:

30 (1) The name, address, and telephone number of the person
31 required to register.

32 (2) The number of milligrams of pseudoephedrine the person
33 manufactured in this state during that quarterly reporting period.

34 (3) The number of milligrams of pseudoephedrine the person
35 imported into this state during that quarterly reporting period.

36 (4) The number of milligrams of pseudoephedrine the person
37 sold, transferred, or otherwise furnished to other persons in this
38 state during that quarterly reporting period.

39 (5) Any other information the Department of Justice deems
40 necessary.

1 (b) (1) *The registration form required by Section 25383.3 and*
2 *the quarterly reports required by this section shall be submitted*
3 *in an electronic form prescribed by the Attorney General.*

4 (2) *A quarterly report may be amended as provided in*
5 *subdivision (a) of Section 25384.1.*

6 (c) *The Department of Justice shall charge a fee to each*
7 *registrant sufficient to cover the costs incurred in maintaining*
8 *the list of registrants, including administrative costs.*

9 (d) *The Department of Justice shall maintain the list of*
10 *registrants electronically where feasible, and shall make the list*
11 *available to the board and law enforcement agencies throughout*
12 *the state where necessary for a legitimate state purpose,*
13 *including, but not limited to, fee collection and criminal*
14 *investigation.*

15 25383.5. *For the purpose of ascertaining whether a person is*
16 *required to file a quarterly report required by Section 25383.4 or*
17 *whether the information contained in the quarterly report is*
18 *correct, or for purposes of preparing a quarterly report pursuant*
19 *to subdivision (a) of Section 25384, the Department of Justice*
20 *may take any of the following actions:*

21 (a) *Require a person having knowledge of the business or*
22 *custody of the books, accounts, and papers of a person who is or*
23 *may be required to register pursuant to Section 25383.3 to*
24 *appear before the Department of Justice, to bring for inspection*
25 *any books, accounts, or papers of the person or in the person's*
26 *possession and under the person's control, and to testify under*
27 *oath touching any matter relating to the organization or business*
28 *of the person.*

29 (b) *Examine the books, accounts, and papers of a person who*
30 *is or may be required to register pursuant to Section 25383.3.*

31 25383.6. (a) *A person who is required to register pursuant to*
32 *Section 25383.3 shall pay the fee imposed pursuant to Section*
33 *25383.1 in accordance with this article.*

34 (b) *The fee owed by a person pursuant to subdivision (a) shall*
35 *be calculated by multiplying the rate established by the*
36 *department pursuant to Section 25383.1 by the number of*
37 *milligrams of pseudoephedrine manufactured in this state or*
38 *imported into this state by that person.*

39 25383.7. (a) *On the last day of each month following the due*
40 *date for filing a quarterly report pursuant to Section 25383.4, the*

1 Department of Justice shall send to the board a report containing
2 all of the following information:

3 (1) The name, address, and telephone number of each person
4 required to register with the Department of Justice pursuant to
5 Section 25383.3 and who owes a fee in an amount that exceeds
6 _____ for the previous quarterly period.

7 (2) The number of milligrams of pseudoephedrine the
8 registrant manufactured in this state or imported into this state.

9 (b) After the board receives the report submitted by the
10 Department of Justice pursuant to subdivision (a), the board
11 shall mail each person listed in the report a notice of
12 determination pursuant to Section 55061 of the Revenue and
13 Taxation Code. Each notice of determination shall contain the
14 amount of the person's fee due in accordance with the
15 information contained in the report submitted to the board.

16 25383.8. (a) The fee imposed pursuant to this article is due
17 and payable 30 days after the board mails a notice of
18 determination pursuant to subdivision (b) of Section 25383.7.

19 (b) (1) Except as provided in paragraph (2), the board shall
20 collect the fee imposed pursuant to this article in accordance
21 with the Fee Collection Procedures Law (Part 30 (commencing
22 with Section 55001) of Division 2 of the Revenue and Taxation
23 Code).

24 (2) Article 3 (commencing with Section 55081) of Chapter 3
25 of, and Article 1 (commencing with Section 55221) of Chapter 5
26 of, Part 30 of Division 2 of the Revenue and Taxation Code do
27 not apply to the collection of the fee imposed pursuant to this
28 article.

29 (c) For purposes of the application of Article 2 (commencing
30 with Section 55061) of Chapter 3 of Part 30 of Division 2 of the
31 Revenue and Taxation Code, "deficiency" includes the amount of
32 the fee that is contained in the notice of determination.

33 (d) Notwithstanding subdivision (b), and except as provided in
34 subdivision (c) of Section 25384.1, with regard to the fee
35 imposed pursuant to this article, the board may issue a refund
36 pursuant to Section 55221 of the Revenue and Taxation Code
37 only to correct a mathematical error contained in a notice of
38 determination issued pursuant to subdivision (b) of Section
39 25383.7.

1 25384. (a) If the Department of Justice determines that a
2 person who is required to register pursuant to Section 25383.3
3 has failed to register in accordance with that section, or has
4 failed to file a correct quarterly report in accordance with
5 Section 25383.4, the Department of Justice may register that
6 person, prepare and file a correct quarterly report, and mail a
7 copy of that quarterly report to that person.

8 (b) If a person who receives a quarterly report prepared by
9 the Department of Justice pursuant to subdivision (a) disagrees
10 with the quarterly report, the person shall notify the Department
11 of Justice and shall specifically identify the areas of
12 disagreement in writing within 60 days after the date the
13 Department of Justice mails the quarterly report to the person.

14 (c) Upon receiving a notice of disagreement pursuant to
15 subdivision (b), the Department of Justice shall do all of the
16 following:

17 (1) Investigate each area of disagreement.

18 (2) Mail a responsive letter to the person who submitted the
19 notice of disagreement addressing each area of disagreement.

20 (3) Revise the quarterly report as necessary.

21 (d) Unless the Department of Justice receives a timely notice
22 of disagreement pursuant to subdivision (b), the Department of
23 Justice shall forward to the board the information in the
24 registration and the quarterly report described in subdivision (a),
25 including a recommendation as to whether the board should
26 impose a penalty pursuant to Section 25384.2. Upon receiving
27 this information, the board shall issue a notice of determination
28 in the manner prescribed in subdivision (b) of Section 25383.7.

29 (e) If a timely notice of disagreement is received pursuant to
30 subdivision (b), the Department of Justice shall, after taking the
31 actions required by subdivision (c), forward to the board the
32 revised information in the registration and the quarterly report
33 described in subdivision (a) and a recommendation to the board
34 as to whether the board should impose a penalty pursuant to
35 25384.2.

36 25384.1. (a) A person may amend a quarterly report filed
37 with the Department of Justice pursuant to Section 25383.4 any
38 time prior to one year from its due date.

39 (b) If an amendment to a quarterly report made in accordance
40 with subdivision (a) would require an increase or decrease in the

1 amount of the fee owed by that person, the Department of Justice
2 shall transmit that information to the board and direct the board
3 to issue a supplemental notice pursuant to subdivision (b) of
4 Section 25383.7 to assess the increased amount or to issue a
5 refund for the decreased amount.

6 (c) Notwithstanding subdivision (d) of Section 25383.8, the
7 board may issue a refund as directed by the Department of
8 Justice pursuant to this section.

9 25384.2. (a) The board may impose any of the following civil
10 penalties:

11 (1) A penalty equal to 10 percent of a person's quarterly fee
12 for each failure of the person to file a correct and timely
13 quarterly report required by Section 25383.4.

14 (2) A penalty equal to 25 percent of a person's quarterly fee
15 for each failure by a person to file a correct and timely quarterly
16 report in accordance with Section 25383.4, after being notified
17 by the Department of Justice pursuant to Section 25384 that the
18 person previously has failed to file a correct and timely quarterly
19 report.

20 (3) A penalty equal to 50 percent of a person's fee for each
21 failure to file a correct and timely quarterly report required by
22 Section 25383.4 with the intent to evade the fee imposed pursuant
23 to this article or to defraud the state.

24 (b) The board shall not relieve any penalties imposed pursuant
25 to this section.

26 25384.3. (a) A person who fails to properly register with the
27 Department of Justice pursuant to Section 25383.3 is subject to a
28 civil penalty in an amount not to exceed ten thousand dollars
29 (\$10,000).

30 (b) A person who is a retailer or distributor and who receives
31 or purchases a product containing pseudoephedrine intended for
32 sale in the state from a manufacturer or importer who is not
33 registered pursuant to this article, in violation of subdivision (c)
34 of Section 25383.3, is subject to a civil penalty in an amount not
35 to exceed ten thousand dollars (\$10,000).

36 25384.4. All civil penalties assessed and collected pursuant
37 to this article shall be deposited into the Environmental
38 Enforcement and Training Account and the revenues shall be
39 available for expenditure pursuant to Title 13 (commencing with
40 Section 14300) of the Penal Code.

1 25384.5. When the date when the department and the
2 Department of Justice provide the Department of Finance with a
3 joint letter that contains a specific finding that the number of
4 sites contaminated with drug lab waste has been reduced to a
5 number that can be remediated in the work plan submitted for
6 that next year, this article shall become inoperative on the date
7 the Secretary of State receives that letter from the Department of
8 Finance.

9 ~~SEC. 2. Section 25354.6 is added to the Health and Safety~~
10 ~~Code, to read:~~

11 ~~25354.6. (a) For purposes of this section, the following~~
12 ~~definitions shall apply:~~

13 ~~(1) "Drug lab waste" means the contamination resulting from~~
14 ~~the use of pseudoephedrine in the unlawful manufacture of a~~
15 ~~controlled substance.~~

16 ~~(2) "Manufacturer" means a person who manufactures~~
17 ~~pseudoephedrine sold in this state~~

18 ~~(b) (1) On or before September 1, 2006, and on or before~~
19 ~~September 1 annually thereafter, the department shall set the~~
20 ~~amount of a fee upon the first sale of pseudoephedrine in this~~
21 ~~state at an amount sufficient to fund the annual work plan~~
22 ~~developed pursuant to subdivision (d), but in an amount not more~~
23 ~~than .00232 cents (\$0.000232) per milligram of pseudoephedrine.~~

24 ~~(2) Commencing January 1, 2007, the State Board of~~
25 ~~Equalization shall collect a fee upon the first sale of~~
26 ~~pseudoephedrine by a manufacturer in this state, in the amount~~
27 ~~determined pursuant to paragraph (1). The fee revenues shall be~~
28 ~~deposited in the Illegal Drug Lab Cleanup Subaccount, which is~~
29 ~~hereby created in the Toxic Substances Control Account in the~~
30 ~~General Fund, for expenditure pursuant to this section.~~

31 ~~(c) (1) The department may expend the funds in the Illegal~~
32 ~~Drug Lab Cleanup Subaccount, upon appropriation by the~~
33 ~~Legislature, to take removal and remedial actions to clean up~~
34 ~~drug lab waste. The department may expend those funds by~~
35 ~~entering into a contract with a city or county to take or oversee~~
36 ~~removal or remedial actions to clean up drug lab waste pursuant~~
37 ~~to this section.~~

38 ~~(2) The State Board of Equalization may also expend the fee~~
39 ~~revenues in the Illegal Drug Lab Cleanup Subaccount, upon~~

1 appropriation by the Legislature, for the costs of administering
2 and collecting the fee.

3 ~~(d) The following procedure shall be used to determine the~~
4 ~~annual cost for the department to take removal or remedial~~
5 ~~actions to clean up drug lab waste pursuant to this section:~~

6 ~~(1) On or before March 1, 2006, and on or before March 1~~
7 ~~annually thereafter, the department shall submit to the~~
8 ~~Department of Finance an annual work plan for taking removal~~
9 ~~or remedial action to clean up drug lab waste, including the~~
10 ~~estimated costs to complete that work plan. In determining the~~
11 ~~annual cost of implementing the work plan, no more than 3~~
12 ~~percent of the annual cost shall include the department's costs for~~
13 ~~overhead and administration.~~

14 ~~(2) On or before April 1, 2006, and on or before April 1~~
15 ~~annually thereafter, the Department of Finance shall certify that~~
16 ~~the proposed work plan is feasible and that the estimated cost for~~
17 ~~implementing the work plan is within 25 percent of the estimate~~
18 ~~determined by the Department of Finance to implement the~~
19 ~~annual work plan.~~

20 ~~(3) If the Department of Finance does not certify the~~
21 ~~department's proposed work plan and the cost estimate pursuant~~
22 ~~to paragraph (2), the Department of Finance and the department~~
23 ~~shall meet and confer and produce a final work plan and cost~~
24 ~~estimate on or before the subsequent May 1 after that decision~~
25 ~~not to certify the work plan and cost estimate.~~

26 ~~(4) If, after conducting a meeting pursuant to paragraph (3), the~~
27 ~~Director of Finance and the director do not agree on the work~~
28 ~~plan and cost estimate, the Governor shall submit a work plan~~
29 ~~and cost estimate to the department on or before the subsequent~~
30 ~~May 15.~~